1949.

File No. O-Extra Prov Juris/49

Legal Department

A BRANCH

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Subject:— Opinions under the Extra Provincial Jurisdiction Act 1947

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File No. O Extra Provt. Juris/49.

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C O N T E N T S.

...e al Department File No. 0 Extra Provincial Jurisdiction ..., 1949.

Serial No.	P.I./O.No.	Subject	Pages
		Extra Provincial Jurisdiction Act, 1947.	Not typed
1	...d S.D.D.O. No. 2973/46-F dt. 15-1-49	Re: Complete merger of the integrated States.	1-4
2	P.I.No. 619-Confl dt. 3-1-49 O.No. 130-Confl. dt. 3-2-49	Whether there is any legal binding on Govt. to grant a license to the Rajpipla Municipality to run the Electric Power House at Raj-pipla	5-8
3	O.No. 221-Confl. dt. 5-6-49	Whether there would be any objection to an ex-gratia payment equal to one fourth of the yearly remuneration without acknowledging in any manner a claim of right to compensation	9-10
4	...No. 3389 dt. 29-3-49	Ex-High Court Judges - Sanjire - Compensation for termination of services - whether Messrs. H.P and T are entitled to from either the central Govt. or this Govt. for failure to employ them in any other post.	11-12
5	P.I.No. 6637/5-5-49 O.No. 5607/ 19-6-49	Whether agreement with the Ko-lhapur State for management of Mills is operative after its merger.	13-16
6	O.No. 259-Confl dt. 13-4-49	Whether the Dist Local Bds. and the Dist. Municipalities constituted under the State laws shall be deemed to have been constituted under the Bom. Local Bds. Act, 1923 and the Bom. Dist Municipal Act, 1901 and as such the funds vesting in those bodies will continue to vest in them.	17-18
7	P.& G.D. Bnd.No. 3062/46-17732-F dt. 5-5-49	Re: personal privileges of the Rulers. Copy of letter from the Adviser to the Govt. of Orissa and Govt. of India's reply thereto	1-22
8	O.No.1001 27-1-49	Bom. Industrial Relations Act, 1946, Indian States(Application of laws, order, 1948- Whether the Aundh notified applying III Act to the engineering industry is still in force. Whether the Aundh Industrial C. constituted by the Aundh State continues to exercise its powers in respect of the pending dispute between the Ambekarwadi Engineering Union and ...	

		Kirloskar Bros. Ltd.	23-30
9	P.I.No. 3183/3-3-49 O.No. 4014/12-4-49	Bom. Shops and Establishment Act, 1948- Whether it can be made applicable to the [redacted] Sangli Municipal area with retrospective effect from 16.8.48	31
10	R.I.No. 405-Confl dt. 16-6-49	R.D. No. 3609/39-M(Confl) re:Vatadari Estates-Absorption of the-into the districts of Ahmedabad and Kaira	37
11	R.I.No. 5707 dt. 30-6-49 O.No. 433-Confl. dt. 1-8-49	Whether the State Bank of Kurundwad (Junior) Act, 1933 enacted by the State is still valid and governs the [redacted] working of the Bank. Whether the Indian Companies Act and the B.A. & P.P. Act appr to the Bank	4
12	P.I.No. 6383 dt. 22-4-49 O.No. 7731/11-7-49	Whether the State Govt. can grant any of the request made by Mr.B.K.Parmar in respect of Sant State including in virtue of the extension of power vested in it by the Central Govt.	4
13	R.I.No. 10661/14-7-49 O.No. 8936/dt. 10-8-49	Whether it is advisable to direct the applicant to approach the Civil Court against the order of the Thakore	4
14	R.I.No. 10535 dt. 13/7/49 O.No. 8141/13/7/49	Whether the C.P.C.orders can be deemed to apply to the States unless and until they are applied by a specific notifn.	
15	O.No. 10743/24-8-49	Whether the interpretation placed by R. on clause 6(iii)(a) of the Baroda State (Application of Laws) Order is correct.	
16	P.No, 133-L/8-10-49	Whether Govt. is bound to pay Rs. 34000 /- which is the estimated value of the site on which the Post Office buildings are situated, to the Ganapati Sansthan	
17	P.& O.D. No. 3062/48 177738-F dt. 9-8-49	Re Letter from Adviser to the Govt. of Orissa and Govt of India's reply there to	
18	P.& O.D.No.3062/46/43148-F dt. 27-8-49 R.I.No. 15901/30-8-49	Re: Taking over of the Power House at Rajpipla	
19	R.I.No. 11128/21-7-49 O.No. 8415/26-7-49 R.I.No. 12068/8-8-49 O.No. 8838/20-8-49	Whether the privilege of accepting a deposit of title-deeds by way of an equitable mortgage should be extended to the Baroda Bank. Whether the Bank of Baroda should be recognised for investment of trust funds.	
20	R.I.No. 16042/17-9-49 O.No. 11263/1-11-49	Whether it would be advisable to reinvest Mr. Naik with the powers of a First Class Magistrate as proposed by the P.A.Amoh Khale	
21	O.No. 10760/26-8-49	Indian States (Application of Laws) Order-Whether Mag strate appointed under the Cr.P.C which was inforce before the order came into effect continued to be Magistrates under the Cr.P.C as applied by the order.	

1	2	3	4
		States Merger (Governor's Provinces) Order-whether Magistrates exercising powers prior to the 1st August 1949 would continue to do so after that date.	73-78
22	O.No. 11841/24-10-49	Jawhar Electric concern sold by the Raja Sahela of Jawhar -whether the sale transaction can be repudiated.	79-82
23	R.I.No. 13852 dt. 16-11-49	Govt. of India S.D. No. 8385/46/55300-P dt. 11-11-49 has proposed to revoke the proprietary rights conferred on Chontias of Kawardha State	83-92
24	O.No. 13552 dt. 26-11-49	Repudiation of agreement with Insura de Co. executed by Baroda Govt.-Whether it was necessary to inform the Co. that Govt. would not be bound by the terms agreed to by the Baroda Govt.	93-96
25	R.I.No. 17725 dt. 22-10-49 O.No. 13539 dt. 23-11-49	Payment of compensation for dispensing with services of Baroda State servant whether the contract is binding on the Bombay Govt.	97-10
26	O.No. 692-Confl.dt.20-9-49	Whether the State Bank of Saurashtra Kurundwad(Junior) Act, continues to remain inforce even after the final merger.	101-108
27	R.I.13804 dt. 15-7-49 O.No.13731 dt. 20-10-49	Agreement between the Cochin State and Messrs. P.Dorabji & Co. for the manufacture and supply of liquor whether order can be issued under sec. 11 of the Indian States(Appln. of Laws) Order, cancelling the agreement	103-10
28	O.No. 13370/23-11-49	Baroda State(Application of Laws) Order,1949- whether provisions regarding vaccination in the Arogya Paxan Niyam are continued in force .	107-110
29	O.No. 13552 26-11-49	whether it would be competent for the Bombay Govt. to reduce excessive pensions granted by the rules without resorting to legislation to that effect.	111-116
30	R.I.No. 12450/26-11-49 O.No. 14320/8-12-49	What procedure should be observed for enabling the Yuvraj of Rajpipla to draw the amount of the Privy Purse on behalf of Rani of Chota Udepur who is his sister	117-120
31	O.No. 20 I-Cons dt.8.12.49	Re: Rakastop Reservoir Project, Belgaum (2) Continuance of monopoly granted by the state Govt. to shree Laxmi Textile Mills Ltd. Bhoj (3) Grant of licenses for installationof oil expellers in the limits of the Palanpur Prant	121-12

32	——.—.— Ct. 4.11.43	Whether the condition in the sale deed regarding monopoly is binding on the Govt. of Ind. and whether the grant of the licence to Shankar Gonda is a violation of the said condition.	120-13

GLR 6-6-46
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L.D.R.I.No. 619 Confl
Dt: 3.1.1949.

Submitted with reference to P.W.D. note dated 29-12-1948. For the facts of the case please see U.O.No. 415-Confl date 2-8-1948 by which a statement of the case was forwarded to the Advocate General. In his opinion No. 29 of 1948 dated 9-8-1948 the Advocate General agreed with the R.L.A. that there was no legal obligation on the Provincial Government to abide by the agreement entered into by the Maharaja of Rajpipla with Mr. Purohit for the sale of the electric power house (at Rajpipla) with its accessories and the land attached thereto and the grant of a license for supplying electrical energy within the Rajpipla Municipal limits; and also that there was no moral obligation on the Government to respect it, in view of its suspicious nature.

Following the above mentioned opinions of the R.L.A. and the Advocate General the agreement of sale with Mr. Purohit was repudiated by the Bombay Government and the Electrical Engineer to Govt. was directed to take over the management of the Power House at Rajpipla and run it as a Govt. concern. This was done on 20-10-1948 and the power House is now in the possession of the Collector of Broach and is worked by Mr. Parham under instructions and guidance of electrical sub-inspector, Godra.

The President, Rajpipla Municipality in his letter No. 664 of 1948-49 dated 23.7.48 has forwarded a copy of the resolution dated 20.7.48 of the Municipal committee regarding the lease of the Rajpipla Electric Power House to a private person (meaning Mr. Purohit) against the promise given to the Municipality by the State and requests Bombay Govt. to interfere in the matter. It is understood from the Collector of Broach that when the Municipal Committee

was first constituted in Rajpipla, it was mentioned in the order constituting it that the water works and the Power House with all sub-stations, mains and other equipment as well as the establishment relating thereto will be handed over to the said committee or to a regularly elected Municipality succeeding it, if it is willing to take over the same and undertake responsibility for the supply of water and electrical energy to the town. In pursuance of this ord r the State authorities transferred the water works only to the Committee and not the power house, which has now been taken over and worked by the Bombay Govt. as explained in paras1 and 2 above. The Electrical Engineer to Govt. of Bombay is of the opinion that since Govt. have decided to run the Power House as a Govt. concern, the question of handing it over to the municipality does not now arise. P.W.D. proposes to inform the President, Rajpipla Municipality in terms of Electrical Engineer's opinion. Please see draft at pp. 17-18 ante. R.L.A. has however been requested to advise hether there is any legal binding on Govt. to grant a license to the Rajpipla Municipality to run the Electric Power House at Rajpipla.

By order date 24-4-1948 the Maharaja of Rajpipla proposed to hand over the Rajpipla Power House together with the water works to the Rajpipla Municipality but subsequently, i.e. on 30-5-48 the Maharaja entered into an agreement with one Mr. Purohit for sale of the same power House. The last mentioned agreement was repudiated by the Bombay Govt. after it took over the administration of the State. The point for consideration is whether the Bombay Govt. would be bound by the promise of the Maharaja given to the Rajpipla Municipality.

Office of the P.L.A.

There is no legal obligation on the Bombay Government to grant a license to the Rajpipla Municipality to run the Electric Power House at Rajpipla. The presumption made by the Electrical Engineer at page 15 ante is correct.

Id. P.W.L. 2/3

Remembrancer of Legal Affairs.

U.O. to P.W.D.No.139 Confl, dated the 3rd February 1949.

SDR 6-6-66
4 Copies.

Office of the R.L.A.

There would be no objection to an ex-gratia payment equal to one-fourth of the yearly remuneration without acknowledging in any manner a claim of right to compensation.

Id./P.M.L. 6/4

Remembrancer of Legal Affairs

U.O. to P.& S.D. No. 221-Confl, dated the 5th April 1949.

SMR 6-6-56
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Office of the R.L.A.

Ex.High Court Judges, Janjira.
.....

Compensation for termination of services.

As observed by the Special Officer, Mr. Tukol, the Remembrancer of Legal Affairs' opinion concurred in by the Advocate General in Mr. Joshi's case (No. 119-Confl., dated 4-3-48) fully governs the present three cases and in law Messrs.Haji, Peerbhoy and Thakore would not be entitled to any compensation from either the Central Government or this Government for failure to employ them in any other post or to continue them in their former appointments However, the Special Officer has suggested that "at the most we may offer to pay them three months" pay in lieu of notice if express notice is necessary of as compensation without prejudi-ce to our rights to challenge the binding nature of the contracts if the matter goes to a court of laws" The Remembrancer of Legal Affairs is requested to advise whether this view of the Special Officer is correct.

It appears from the orders of appointments of Messrs. Haji, Peerbhoy and Thakore that they have been appointed for adefinite period of three years on a fixed annual remuneration payable in two instalments each in March and September every year. There is absolutely no provision for terminating their appointments by notice on either side. If these orders are tobe respected,it would not be legally possible to terminate their services by three months' notice nor would it be possible to offer them a compensation of three months' salary, for their appointments are made on the basis of yearly remuneration that is to say, yearly hiring and if compensation is to be paid, it will have to be for paid, it

will have to be aid for the whole of the unexpired period of service. Moreover, as we propose to take our stand on the grounds that these agreements are not enforeable against the Provincial Govern-ment and that there is besides no scope for continuing them, it would not be desirable to give three months' pay inlieu of noticel since that course might be construed as an asknowledgment on Government's part of these officers' claim under the agreement Government may, therefore, inform them that on the abolition of the High Court of Judicature at Janjira, their services automatically ceased and this Government would in no way be bound to continue them in service for the unexpired period of service and they would not be entitled to claim any salary or compensation.

Id./P.M.L. 28/3

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 3389, dated the 29th March 1949.

SMR 6-6-56

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R.I.No. 6637 dated 5.6.49

Submitted.

Please see F.D. note at pp. 21-23 ante. The question raised by F.D. is whether the agreement between the Kolhapur Governme-nt and the James Finlay & Co. Ltd. regard-ing the management of the Shree Shahu Chha-trapati Mills, Kolhapur, is operative and if not whether a new agreement is necessa-ry after the date of the merger when the Government authority of the State will cease to exist.

2 The agreement between the Kolhapur Government and the James Finlay & Co,Ltd. was executed on 16-8-1946 entrusting the management of the Shree Chhatrapati Mills, Kolhapur, for a period of five years beginning with 1-11-1946 to the Govt. Under clause(2) of the conditions embodied in the agreement the Managing agent is entitled to certain remuneration on account the managing agency. Clause(3) provides that the Kolhapur Govt. shall charge interest at 3% only on loans and advances granted to the management from time to time. Clause(8) provides that profit and loss statement shall be supplied to the Kolhapur Government by the Managing agents at the end of each month. and clause(7) provides that the Managing Agents shall obtain prior approval of the Govt. to all items of capital expenditure exceeding Rs. 5000/-. It is clear from this agreement that the managing agency agreement will continue till the 31st October 1950. According to B.L.A.'s opinions No. 119 Confl. dated 4-3-1948 and 331 Confl. dated 24-6-1948 with which the Advocate Gener

has agreed, ordinarily there is no legal obligation on the Provincial Government to abide by agreements entered into by the Rulers of States with private parties before the merger of their States with the Province of Bombay. In this case, however, there are peculiar circumstances in view of which repudiation of the agreement is fraught with difficulties. In the first place the agreement with the Kolhapur State was entered into long before the merger of the state with the rovince of Bombay and that too for the efficient management of the mills which is the property of the State. There do not appear to be any circumstances which throw any doubt on the bona fides of the transaction Apart from this there has been a tacit approval on the part of the Bombay Government in granting an advance of Rs. 25 lakhs for making purchases of cotton in March 1949. It may therefore be advisable for the Government to give effect to the terms of the agreement entered into by the State with the James Finlayd Co. There is no condition in the agreement binding the Kolhapur Government to grant an advance to the Managing Agents. Clause(3) however provides only for the rate of interest for such loans or advances whenever they are granted to the management. If no such advances are made in time the mills will have to be closed down and there is bound to be discontent amongst the labour. In view of these peculiar circumstances it may be best to allow the agreement torun its course till 31-10-1960.

SKR 6-6-56, 4 Copies.

Office of the R.L.A.

Whether agreement with the Kolhapur State for management of Mills is operative after its merger.

It is open to Government either to ratify or repudiate the agreement. In the circumstances states by Finance Department ratification appears to be advisable particularly when Government have already agreed to advance loan in pursuance of the existing agreement. On the point raised in paragraph 3 at page 22 ante the view expressed in the margin is correct. On the point raised inparagraph 4 the period of repayment may be prescribed.

Id./P.M.L. 19/5

Remembrancer of Legal Affairs

U.O. to F.D., No. 5607 dated the 19th May 1949.

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Office of the R.L.A.

The view taken at A of the Educati-on and Industries Department note at page 2 ante is correct.

2 Although the Bombay Primary Education Act under 1947, has been applied to the integrated States under the Indian States(Application of Laws) Order, 1948, the District Local Boards constituted under that Act as in force in the Province will have no juriediction over any area in such States. Similarly any local authority which has been constituted under any law in force in the integrated State, and repeal by the Indian States(Application of Laws) Order shall in virtue of para. 6 of the said order be deemed to have been constituted under the corresponding enactments as extended to the States. The Bombay Local Boards Act, 1923, and the Bombay District Local Boards Act, 1923, have been extended to the Indian States. Consequentl the District Local Boards and the District Municipalities constituted under the State laws shall be deemed to have been constituted under the Bombay Local Boards Act, 1923, and the Bombay District Municipal Act, 1901, as extended to the States and as such the funds vesting in those bodies will continue to vest in them.

Id./P.M.L. 23/4
Remembrancer of Legal Affairs.

U.O.to E.& T.D. No. 269 Confl. Dated the 23rd April 1949.

GHR 6-6-56
4 Copies.

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Re. Industrial Relations Act in Aundh State.

Bombay Industrial Relations Act, 1946.
Extra Provincial Juriad ction Act 1947, and Indian States (Application of Laws) Order, 1948.

It appears that before the 8th March 1948 the Aundh State had adopted the Bombay Industrial Relations Act, 1946, and applied it to the engineering and glass works in the State and, by virtue of powers conferred thereunder, the State had constituted an Industrial Court and a dispute between the Kirloskarwadi Kamgar Union and Messrs. Kirloskar Brothers, Ltd., was referred to it for arbitration. After the administration of the Aundh State was taken over on the 8th March 1948 by the Province of Bombay under the Extra Provincial Jurisdiction Act, 1947, Government promulgated an order called the Indian States (Application of Laws) Order, 1948, whereunder the laws in force in the State were repealed with certain savings and the laws in the Province were extended to the State. The Bombay Industrial Relations Act, 1946, is one of the laws so extended to the State and the following questions have arisen for consideration:

(a) Whether the Aundh notification applying the Bombay Industrial Relations Act to the engineering industry is still in force; and

(b) Whether the Aundh Industrial Court constituted by the Aundh State continues to exercise its powers or at least in respect of the pending dispute between the Kirloskarwadi Kamgar Union and Messrs. Kirloskar Brothers Ltd.

The Secretary, Labour Department, is of the opinion that, since the Bombay Industrial Relations Act was applied to engineering and glass industries in the Aundh State and since that does not conflict with the application of the Bombay Industrial Relations Act in the Province

of Bombay, perhaps the disputes in the engineering and glass industries in the Aundh State can still be settle under the local Bombay Industrial Relations Act machinery by reason of the saving in the latter half (two paragraphs beginning with "For") of the clause 5 of the Indian States (Application of Laws) Order, 1948. The Special Officer, P.& S.P. does not agree with the view taken by the Secretary, Labour Department and considers that the notifications issued by the Aundh State applying the Act to the engineering and glass industries in Aundh State has lapsed. The B.L.A. is requested to advise.

By virtue of para.5 of the Indian States (Application of Laws) Order, 1948, the Bombay Industrial Relations Act, which was adopted by the Aundh State before its merger, stands repealed and by virtue of para.3 the Bombay Industrial Relations Act has been applied to that State. Para. 6 saves the jurisdiction of Courts and Tribunals to decide pending matters. The Tribunal which was appointed by the Aundh State to decide the dispute between the Kirloskarwadi Kamgar Union and Messrs. Kirloskar Brothers, Ltd., will have therefore jurisdiction to decide the pending dispute; and the fact that the Bombay Industrial Relations Act has not been applied to the engineering and glass industries in the Province of Bombay would in no way affect the jurisdiction of that Tribunal to try the pending dispute.

The next question for consideration is whether the notification issued by the Aundh State applying the Bombay Industrial Relations Act, as adopted by the State, to the engineering and glass industries is saved by the repeal of that Act. The repeal of the Bombay Industrial Relations Act,

as applied to the Aundh State, would save certain matters which have been specified in the proviso to para 5 of the Indian States (Application of Laws) Order, 1948. That proviso states:

"The repeal by this Order of any such enactment shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted, or the proof of any past act or thing; Nor shall the repeal by this order of any enact ment affect any principle or rule of law, or establ shed jurisdiction, form or course of pleading, practice, or procedure, or existing usage, custom, privilege, restriction, exemption , office or appointment in so far as the same respectively is not in any way inconsistent with any of the enactments extended under paragraph 3 of this order, notwith -standing that the same respectively may have been in any manner affirmed, recognised or deprived by, in or from any enactment hereby repealed etc."

It is true that the notification issued by the Aundh State applying the Bombay Industrial Relations Act to the engineering and glass industries is in no way inconsistent with the provisions of the Bombay Industrial Relations Act, as applied to the Province of Bombay, for under subsection (4) of section 2 it is open to Government to extend the Bombay Industrial Relations Act to all or other industries. If the notifications were to fall under the proviso beginning with "Nor" to para. 5 of the Indian States(Application of Laws) Order, 1948, the view taken by the Secretary, Labour Department, would obviously be correct. But what is saved by the proviso beginning with "Nor" is merely the established jurisdiction of the Court etc . and therefore , that part of the proviso would not save the notification. However, under the first part of the proviso anything already done or suffered or any right, title, obligation or liability already acquired , accrued or incured or any remedy or proceding in respect thereof etc

is saved. By issuing the notification by the Aundh State applying Bombay Industrial Relations Act to the engineering and glass indsutries certain rights were created. Under Chapter III Unions must have been recognised and under Chapter VII standing orders must have been settled and under Chapter II authorities to settle the disputes must have been also constituted. The effect of registration of Unions, settlement of standing orders and the appointment of proper authorities to settle the disputes would be to create a right in favour of the employers and employees to settle their disputes under the provisions of the Act. This is a kind of right contemplated by the first part of the proviso to para 5 of the Indian States (Application of Laws) Order, 1948. To hold that the notification issued by the Aundh State became ineffective by reason of the repeal of the Bombay Industrial Relations Act under para. 4 of Order would be to render the registration of the Unions and the settlement of the standing orders ineffective and inoperative [redacted] withdrawing certain rights from the employers and employees, a result which could not have been contemplated by the Indian States (Application of Laws) Order. It would, therefore, be reasonable and proper to hold that the notification, issued by the Aundh State applying the Bombay Industrial Relations Act to the engineering and glass industries as being in force notwithstanding the repeal of the Bombay Industrial Relations Act, as adopted by that State. Since, however, the point is not entirely fre from doubt, it would be desirable to issue

an order under para. 11 of the Indian States (Application of Laws) Order, 1948, stating clearly that the notification issued by the Aundh State is still operative.

Id./P.M.L. 26/4

Remembrancer of Legal Affairs.

U.R. toLabour Department No. 1001 dated the 27th January 1949.

2183
3/3/49

(The Labour Deptt. should have referred the qestion to the Sp. Officer in P. &S.D.)

Under paragraph 3(1) of the Indian States (Application of Laws) Order, 1948, all enactment specified in Parts I and II of Schedule I in force in the Province of Bombay immediately before 28/7/48 shall extend to and be force in the Indian States specified 1 Schedule I Subject to any amendments to which the said enactments are for the time being generally subject in the Province of Bombay, The Bom. Shops and Establishments Act, 1939, is one of the enactments specified in Part II of Schedule IIand consequently under paragraph 4 of the Order the said Act was deemed to have come into force in the Sangli State with effect from 15th September 1948. The Bom. Shops and Establishments Act, 1948 came into force on 11/1/49 and from that date the Bom. Shops and Establishments Act, 1939 xxxx was repealed (vide Sect. 72). The Bom. Shops Establishment Act, 1948, would therfore be deemed to have applied to the Sangli State on 11/1/49. In exercise of power conferred by sub-sec.(4) of sect. 1 of the Bom. Shops andEstablishments Act, 1948, Govt. directed that all the provisions of the Act shall come into force in the Sangli Municipal Area from 1st March 1949. The Chief Administrator, Sangli, however, requests that the Act may be made applicable to the Sangli municipal area with retrospective effect from 15/9/48. The Labour Depatt. considers it doubtfullwhether this can be done and request L.L.A. to advise.

P.T.O.

Thoug the Bom. Shops and Establishments Act, 1948 extended to the whole of he Province of Bombay, which under paragraph 3 of the Indian States (Application of Laws) Order, 1948, shall be construed as including reference to the Province of Bombay and the Indina States. Sub-sect.(3) of sect. 1 of the Act provides that in the first instance it shall come into force only in the local area specified in Shedule 1. Sub-sect.(4) of sect. 1 empowers the Prov. Govt. to direct that all or any of the provisions of the Act shall come into force in such other areas having a population of twenty five thousand and more as may be specified in the notification This provision makes it clear that the provisions of the Act would come into force in other areas only on a direction published to that effect in the Official Gazette. In Stewart V.Brojedra Kishore Roy (2 F.E.J. 112) Narsinga Raj Observed: "It seems to us that the same consideration that have led to the enunciation of the rule against retrospective operation of statutes would also lead to the adoption of a shilar rule in the case of statutmory notificatins. That is to say, unless the parent Act itself authorities the issue of a notfn. with retrospective effect, it must be presumed that such notifn. is forbidden. It is seldom that retrospective notifn. are contemplated; and on the rare occasions when they are con emplated, it is usual to say so pmlainly." Moreover, when the parent Act, namely the Bom. the Bom. Shops and Establishment Act, 1948, itself came into Being on 11/1/49, it is not understood how a notifn. issued under sect. 1(4) can be issued as to be operative from 15/9/48. The proposal of the Chief Administrater, Sangli, is not therefore legally feasible.

Id/- E.B. 9/3

A.L.R.

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In his letter dated 16th February 1949 the Chief Administrator, Sangli, has stated that before the introductio of the Bombay Shops and Establishments Act, the Sangli Shops and Establishments Act, which was genenally on the lines of the Bombay Act, was made applicable to the Sangli State, an it was also enacted therinthat it was to come into force in the Sangli Shops and Establihsments Act was repealed with effect from 15th September 1948, and the Bombay Shops and Establishments Act, 1939, was made applicable by the Indian Stat (Application of Laws) Order, 1948, Sub-section (3) of section 1 of the Bombay Act contemplated that Government may by notification in the Official Gazette direct that all or any of th provisions of the Act shall come into force in any other area on such date as may be specified in such notification. What was done by the Indian States (Application of Laws) Order, 1948, was to extend and to bring into force the Act and the notifications thereunder in the Sangli State Naurally, there could have been no notification under the Act directing that it should come into force in Sangli Municipal limits. It was, therfore, necessary to issue such a notification after the Act was applied to Sangli State by the Indian States (Application of Laws) Order. It is not clear from the papers whether any such notification was issued. Without such notification, the Act cannot be said to have come into force in the Sangli Municipal limits.

The Indian States (Application of Laws) Order makes the no provision for authmatically extending to the States concerned an enactment- which in the Bombay Province takes the place of a repealed enactment which was exteded to that State by the Order. Neither para. 2(2) of the Order, nor the provisions....

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4 copies.

provisions of the proviso (a) to section 73 of the Bombay Shops and Establishments Act, 1948, would be of any avail. Unless the new enactment of 1948 is specifically extended to Sangli State by a fresh order under the Extra-Provincial Jurisdiction Act, 1948, the enactment of 1939 would continue to be in operation.

2. If therfore, the Labour Department desires to bring into force the Bombay Shops and Establishments Act, 1948, the proper course would be to issue an order in the first instance extending it to the Sangli State, Inasmuch as no notification under the 1939 Act bring it into force in the Sangli municipal limits seems to have been issued, while extedding the enactment the Schedule to the Act may be properly adapted so as to include therein Sangli and such other areas in States where it is intended to bring it into operation.

Id/- P.M.L.
12/4

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 4014,
dated the 12th April 1949.

JPS.3/6/56/
4 copies.

Office of the R.L.A.

The Act under which the Kurundwad (Jr) State Bank is constituted has been continued even after final merger. It is a matter of policy for Government to decide whether the Act should be repealed or modified depedding upon the decision to continue the Bank or not. Such repeal or modification will have to be placed before the Legislature.

2. As regards the question of debts, although the Bank has presented applications under the Bombay Agricultural Debtors Relief Act as applied to the State, it must be pointed out that the Bank will necessarily suffer lossesif the dbts are to be scaled down under that Act. The Bank was put in a privileged position regarding the mode of recovering its dues. Government may, therfore, consider the desirability of amending the Bombay Agricultural Debtors Relief Act by including this Bank within th expression 'Scheduled Bank' occurring in section 3(vi) of the Act.

3. It appear that for other reasons arising out of merger the Bombay Agricultural Debtors Relief Act will have to be amended and, therefore, one consolidated amending Bill may be framed.

Id/- P.M.L.
1/8.

Remembrancer of Legal Affairs.

U.R. to F.D. No. 483-Confl dated 1st August 1949.

JPR.8/6/56.
4 copies.

6353
28/4/49

It appears from the petition submitted by Mr. Kishoresinh Kalusingh Parmar that Rana Parvatsinhji was the Ruler of the Kadana State in Revakantha Agency. Rana Parvatsinhji who was issueless took in adoption Rana Chattrasalji In 1932 Rana Chhatrasalji who succeeded Rana Parvatsinhji selected the petitioner for the purpose of adopting him. But before the formal adoption was made, Rana Chhatrasalji died. After Rana Chhatrasalji's death, petitions were submitted to the Political Adviser to the Government of India requesting him to nominate the petitioner as the Ruler of Kadana State. In March 1943 the petitioner was informed by the Political Agent, Revakantha, that this claim to succeed to the Kadana Gadi has been rejected, andit was decided to absorb Kadana States requesting that the amalgamation of the Kadana State with the Sant State should be cancelled, and the State should be restored to its original position with an option to accede to the Indian Dominion. It seems that the petitioner's request was not acceded to by the Government of India. Thereafter the Central Government assumed extra-provincial jurisdiction over the Sant State which apparently included the Kadana States and on 4th June 1948 delegated to the Provincial Government of Bombay the extra-provincial jurisdiction which it exercised over the Sant State, (which included the Kadana State.) In virtue of this delegated power the Provincial Government issued an order on 28th July 1948 for the purpose of exercising extra-provinicial jurisdiction over the Indian States....

Submitted a memorial (in the Sant State. In Sept 47 the petitioner to the Agency States)

States which included the Sant State (see the Indian States (Application of Laws) Order, 1948).

2. The petitioner has made the following requests: (1) that the decision of the Secretary of State absorbing Kadana in the Sant State be set asides; (2) that the petitioner be recognised as the nearest heir to the late Thakore Saheb Chhatrasalji and as such entitled to the Gadi of Kadana; (3) that Kadna State be permitted to intergrate itself with the Bombay Province in its own right; and (4) that an annuity be granted to the petitioner on the principles adopted in respect of other States of Gujerat.

3. it seems that the petitioner has been ill-advised to approach the Government of Bombay for granting the aforesaid requests. The Central Government has pointed by the Special Officer in his note at pp. 26-27 must have treated the State of Kadana as part and parcel of the State of Sant before it executed an agreement with the Sant State for exercising extra-provincial jurisdiction over it. This took place apparently after the petitioner hadmade a representation to the Government of Bombay in September 1947. The Government of India must have no doubt taken into cosideration the claims of the petitioner before the agreement with the Sant State was executed. The Provincial Government no doubt exercises extra-provincial jurisdiction (over the Sant State including the Kadna State as a delegatee of the Govt. But it has no jurisdiction) to grant any of the requests made by the petitioner in virtue of the exercise of power vested in it by the Central Government.

R.L.A. -

JPS.8/6/56.4c,

Office of the R.L.A.

Kadana was amalgamated with Sant as far back as 1943 and apparently the Government of India then refused to countenance the claim made by the petitioner. Since Kadana thus came to be amalgamated, the question of the petitoner being adopted as the successor to the gadi of Kadana does not arise. Besides, the petitioner was only selected by the deceased Ranasaheb of Kadana for adoption and has not been actually adopted. His present petition is without substance. The Goverament of India assumed extra-provincial jurisdiction in terms of the authority, jurisdiction etc. which the Raja of Sant had including therein the powers, jurisdiction, etc. over Kadana also. This Government is merely acting as the delegate of the Government of India. The petitioner had submitted a memorial to the Ministry of States in September 1947 and presumably that memorial must have been rejected when the Government of India decided to assume jurisdiction under the Extra-Provincial Jurisdiction Act over Sant State, including therein Kadana also, by taking a merger agreement from the Raja of Sant. The petitioner's only grievance now is that he should get the annuity which he might have got, had he been recognised as the independant Ruler of Kadana and signed a merger agreement in that capacity. In the above circumstances, that claim is without substance.

Id/- P.M.L.
9/7

Remembrancer of Legal Affairs.

U.R. to C.S. No. 7731,

dated the 11th July 1949.

JPS.8/6/56.
4 copies.

LDRINo 10641
14-7-49

Office of the R.L.A.

Though the order of the Thakore appears to be illegal, the aggrieved party had preferred an appeal to the Special Officer, Baroda. The latter rejected the appeal on 1/7/1947 and directed the parties to approach a Civil Court. It appears from the papers that the Thakore Sold the lands for Rs.4000. The applicant has approached Government on 30/9/1948 more than a year after the previous order of rejection. Even if the order of theThakore is set aside, Government will find it extremely difficult to give effect to their decision as the lands are in the possession of a bona-fide purchaser for value. The question as to who should pay Rs.4000 to the person in possession will also arise.

In view of these circumstances, it is advisable that the applicant may be directed to approach the Civil Court.

Id/- P.M.L.
9/8/
Remembrancer of Legal Affairs.

U.R. to R.D. No. 8994,
dated the 10th August 1949.

JPE.8/6/56.
4 copies.

L.D.N.I.No. 10805 dt. 15/7/1949.

Submitted.

By a notification No. 1020/II dt. the 14th June 1948, issued by the Civil Supplies Department the following three Acts viz. (1) the Essential Supplies (T.P.)Acts 1946; (2) the Bombay Essential Commodities and Cattle (Control) Act, 1946 and (3) the E.S.(T.P.) and the E.C. and C.(Control)(Enhancement of Penalties) Act, 1947, were applied t the Gujarat States. The notification in terms provided that the three Acts subject to any amendment to which they are for time being subject in the Province of Bombay, shall, so far as the circumstances admit, extend to the States.

The Iron and Steel (Control of Production and Distribution) Order, 1941 and the Iron andSteel (Scrap) Control Order, 1943 are in force in the Province by virtue of the Essential Supplies (Temporary Powers)Act, 1946 and a question has now arisen whether these Orddrs can be deemed to have come into force in the Gujarat States by viture of the above notification. The special Officer, P. & S.D. who was consulted in the matter has advised that these orders cannot be deemed to apply to the States unless and until they are applied by a specific notification. The R.L.A. is requested to kkconfirm.

Application of
Steel Control Orders
to Gujrat States.

Seen and returned. The view taken by the Special Officer P. & S.D. Dept. is correct.

Id/- R.T.K. 16/7/

R.L.A. -- Id/- P.M.L.
16/7

J.R. to Labour Department.No.8141 dt.19/7/49. JPS.8/8/56

OFFICE OF THE R.L.A.

Interpretation placed by F.D. on clause 5(iii)(a) of the Baroda State (Application of Laws) Order, 1949 is correct and no special enactment is necessary.

Investments of trust moneys in fixed deposits with the Bank of Baroda may be either under an express provision in the instrument of trust or under the provisions of the Baroda Trusts Act. In the case of former the investments will still continue to be authorised and no change would be necessary. In the case of the latter, the present investments will continue to be valid until they become due but thereafter it will be necessary for the trustees to convert them into authorised securities.

Id/- P.M.L.
23/9/
Remembrancer of Legal Affairs.

U.O.R. to F.D. No. 10741
dated the 24th September 1949.

JPE.8/6/50.
4 copies.

Office of the S.L.A.

It appears that the site on which the Sangli Post Office buildings are situated originallly belonged to Shri Ganapati Sansthan, The area of this site is 3,425 sq.ft. In the year 1868, thesite was transferred to the State unconditionally andhas been, since then , in the enjoyment of the State (see letter dated 2nd April 1948 from the Manager of the Ganapati Sansthan, at page 33). In the City Survey Property Register there is an entry in regard to this site as " [illegible] - पोस्ट ऑफिस. After the site was transferred to the State, the State built thereupon the Post Office buildings. Just before the merger ive. on 7.3.48 the Rajasaheb of Sangli passed the following order :-

> " As the site belongs to Shri Ganapati Sansthan andx as it is willing to purchase the present Post Office Bukilding for the estimated price viz. Rs.27,800/- it is directed that Post Office Buildings should be sold to Shri Ganapati Sansthan for Rs. 27,800/- If the Government would require the buildings to locate the Training College there, the Ganapati Sansthan will have no objection to lease it for a temporary period at a reasonabl rent."

It is the wish of the Rajasaheb of Sangli, who is the Trustee of the Ganapati Sansthan that Government should allow the Sansthan to complete the transaction by paying rs. 27,800/- to

Government....

Government, which, as stated above, is the estimated cost of the Post Office Buildings. In case the Government require thesite for their own use, it is suggested by the Rajasaheb that Government should pay to the Ganapati Sansthan the estimated value of the site on which the Post Officer Buildings are situated namely, Rs.34,000/- at the rate of Re. 2-8-0 per sq. ft. The question for the R.L.A's consideration is whether Government is bound to pay Rs. 34,000/- which is the estimated value of the site on which the Post Office buildings are situated, to the Ganapati Sansthan.

2. If, as it appears to be the case, the site on which the Post Office Buildings are situated was transferred to the State unconditionally in 1888 and has been in the unrestricted enjoyment off the State since then, it does not appear that the Ganapati Sansthan has now any legal claim to the site. Governmentwould not, therefore, be liable to pay to the Ganapati Sansthan any amount in respect of thesite. However, if after making further inquiries Government are satisfied that the site originally belonged to the Ganapati Sansthan, it would be forthe Government to consider whether they should, in equity, pay to the Ganapati Sansthan the original value of the site.

Id/- P.M.L.
7/10

Remembrancer of Legal Affairs

MRU.R. to P. & S.D. No. 188-L dated the 8th October 1949.

JPE.3/6/56.
4 copies.

Office of the R.L.A.

Section 58(f) of the Transfer of Property Act, 1882, restricts the concession of effecting a transaction of equitable mortgage by deposit of title deeds to the ~~two~~ons named therein. It cannot be made availabl to any individual, bank or company as such. It is possible to extend the concession to Barodaby a notification as provided in the section as the concession granted by the State came to an end on 30th July 1949.

Section 20 of the Indian Trusts Act, 1382 specifies the authorised securities into which a trustee is bound (subject to any direction contained in theinsturment of trust) to invest the trust-moneys. The securities do not contain any provision for investment in fixed deposits andit is not usual to treat such deposits as authorised. Sub-section (f) confers xuponthe High Court a power to authorise any other security by a rule.

In exercise of that power High Court has framed a rule (rule 905 of O.S. Rules) which authorises certain additional securities but these also do not contain a provision for investment in fixed deposits with approved banks. Instead of approaching Government of India for the amendment of the section Finance Departmentmay perhaps approach the High Court in thematter.

Id/- P.M.L.
19/8

Remembrancer of Legal Affairs.

U.R. to F.L. No. 9398.
dated the 20th August 1949

JPE.8/6/56.4c

OFFICE OF THE R.A.L.A.

For the principal reason that the Code of Criminal Procedure under which Mr. Naik was originally invested with the powers of a First Class Magistrate on 15th December 1948 is being treated as a law distinct from the Code as it was in force in the Province proper, and for the reasons stated in R.L.A's opinion No. 10760, dated 26th September 1949 it would be advisable to reinvest Mr. Naik with the powers of a First Class Magistrate as proposed by the District Magistrate, Panch Mahals.

d/- P.M.L.
31/10

Remembrancer of Legal Affairs.

U.R./ to H.D.,No. 12263

dated the 1st November 1949.

JPE.8/6/50
4 copies.

OFFICE OF THE R.L

The District Magistrate of Kaira in his letter dated 24th August 1949 refers to the States territories of (1) Cambay (2) Balasinor (3) Petlad (4)Attarsumba and (5) Bhadran. Cambay andBalasinor are Indian States within the meaning of the Indian States (Application of Laws) Order, 1948, while Petald, Attarsumba andBhadran, it is understood, are part of the Baroda State. As respects the first two States. under paragraph 6 of the Indian States(Applications of Laws) Order, 1948, any court, tribunal, authority or officer constituted or appointed under any law in force in any Inidna State andrepealed by this Order shall be deemed to have been constituted or appointed under the corresponding enactment extended to the Indian States by this Order. Therefore, Magistrates appointed under the Code of Criminal Procedure, which was in force before the above order came into effect continued to be Magistrates under the Code of Criminal Procedure as applied by the Order. Under paragraph 4 of the States Merger (Governor's Provinces) Order, 1949, all the laws in force in a merged State or in any part thereof immediately before the 1st of August 1949 including orders made under section 3 or section 4 of the Extra Provincial Jurisdiction Act, 1947, shall continue in force until repealed, modified or amended by a competent Legislature or other competent authority. It follows, therfore, that the Magistrates exercising powers prior to the 1st August 1949 would continue to do so fafter that date. It has, however, been recognised that the laws s continued are distinct from the laws as are n force in the Province proper. See letter No. 3108/49 BV, dated 26th July 1949 of the Government of India inistry of Law. As respects Baroda territory, the

position is practically the same; but there is one additional point of ditinction. Under paragraph 6 of the Baroda State (Application of Laws) Order, the Courts, tribunals officers etc. were to continue in office and to exercise their powers and functions for or within the areas and for the period for which they were originally constituted or appointed under any enactment in force in Baroda Stateam so that the Magistrat es who continued in office after the 1st of August 1949 would naturally continue for the area and for the period for which they were originally appointed.

2. This being the legal position in it is difficult to give a general reply to the question raised by the District Magistrate of Kaira. Four conceivable cases may arise:

(1) A person exercising magisterial powers may continue in what was formerly a State territory. In that case there would be no difficulty, and he would be competent to exercise the powers which he had been doing prior to the 1st of August 1949 subject to this qualification that if the territory be Baroda territory, his powers would be restricted to the area and to the period for which he was originally appointed.

(2) A person exercising magisterial powers in the province proper may be transferred to what was formerly a State territory.

(3) A person exercising magisterial powers in the Province proper may be transferred to what was formerly a State territory.

(4) A person exercising magisterial powers in what was formerly a State territory or in the territory of the Province may be put in charge of a local area comprising both kinds of

territories.

In these last three cases, inasmuch as it has been recognised that the Code of Criminal Procedure which has been continued in what were formerly State territories is distinct from the Code of Criminal Procedure as it applies to the Province proper, strictly speaking it would be necessary to reinvest a persons with magisterial powers under the Criminal Procedure Code as applied to the State or to the Prohvince or under combination of both, as the case may be. This anomalous position will, it is hoped, soon come to an end when the legislation which the Government of India promise would be enacted and the laws as prevailing in the Province would be made applicable to what were formerly state territories. It is suggested that rather than issuing numbrous notifications investing Magistrates with powers as stated above, the Governmentof India may be requested to apply as far as possible all laws with retrospective effect from the 1st of August 1949 so that the intervening position would automatically get regularised.

Id/- P.M.L.
24/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 10780,

dated

JPS.8/6/56.
4 copies.

Legal Department.

Jawhar Electric concern.

"If a soverieign State has acquired the territory or property of another sovereign State whether by conquest or annexation or by thesuppression of revlutionay Government, it cannot be made liable in theMunicipal courts for the acts of its predecessor, nor can privilages or rights obtained from the predecessor be enforeced by action against the successor; andthere is no rule international law by which in the absence of express reservations the acquiring state is subject to the contractual obligations of its predecessors".(see Halsbury Vol.XXVI p.255). This principle was followed by the Remembrancer of Legal Affairs in his opinion relating to the Rajpipla Electricity case which was concurred in by the Advocate General.qThe electric concern with all the buildings and other property at Jawhar was sold by the Raje Saheb of Jawhar to Messrs. Patel and Bhaisa Brothers just on the eve of integration of Jawhar State and this sale was subject to the payment of theprice of Rs.45,000/- inyearly instalments of Rs.3,000/-, the first instalment being payable on 31st December of 1948. By this sale the property has vested in the purchasers. Consequently, there is no question of privilages or rights of the purchasers being enforced in the municipal court against Government. Nor is there any question of enforcing the contractual obligations of the Maharaja of Jawhar, for under the sale there is no obligation but a right to claim the purchase price. Consequently, the question of repudiating the sale transaction would not arise. The view taken by S.O.,P. & S.D. is correct.

In view of the legal position stated above, all that Government can claim would be the balance of the purchase price. It appears that the purchasers are

willing to hand over the property to Government. In the sale deed there is no provision for enforcing the who claim at once. Government will have to recover from the purchasers each instalment as it falls due In the circumstnce, it appears desirable that Government should accept the proposal of the purchasers to hand over the property to Government. The purchasers would not be entitled to any compensation by-way of damages; but in fairness theyx would be entitled to a refund of the first instalment which must presumably have been paid by them andreimbursementof the cost of repairs if any. These amounts can be setx off against the sum of Rs-. 11,000/ which they appear to have realised by sale of the spare engine andthe balance can be claimed from them.

Id/- J.R.D.
24/10

Additional Secretary to Government,

U.R. to P. & S.D.,No. 11941,
dated the 24th October 1949.

JPE.8/6/56.
4 copies,

Office of the R.L.A.

Repudiation of agreement with Insurance Company executed by Baroda Government. Extra-provincial Jurisdiction Act, 1948.

It appears that the Government of Baroda had entered into an agreement with Mr. Tulsidas Kilachand for starting by him of an Insurance Company for 'General' and 'Life' insurance business, but the agreement was not actually executed between the parties. According to the draft agreement as amended (pages 7-21, 23), the Government of Baroda had agreed to purchase the entire issue of 25,000 Preference Shares of Rs. 100/- each and1000 Ordinary Shares of Rs.100/- each and was entitled to nominate one Director. The Government of Baroda had further agreed to give the Company all 'General' insurance business of Government except the 'Life' insurance business of the Government Servants for 25 years from the commencement of the business of the Company. In pursuance of the said draft Agreement the Government of Baroda purchased all 25,000 Preference shares of Rs.1000/- each and paid half the amount while in respect of 1000 Ordinary Shares of Rs.100/- each the sum of Rs.20/- per share was paid and Mr. C.J.Sutaria was appointed Government nominee on the Board of Director of the Company. The question raised for the R.L.A's consideration is whether, since there was no formal agreement, it was necessary to inform the Company that Government would not be bound by the terms agreed to by the Baroda Government.

2. It is true that it would be quite competent for the Government to repudiate the agreement in the presnet case, particularly when there has been no regular agreement executed between the Baroda Government and Mr. Tulsidas Kilachand, but the repudiation or the affirmation thereof will have to be done as a whole. In the present case, the Baroda Government has already paid about Rs.12,70,000/- on account of

the.....

the shares assigned to it and if, at this stage, Government repudiates the contract it is likely to create complications. At the sametime it xis clear that the affirmationm of a contract which gives a monopoly of insurance business would be neither practibabbe nor expedient. Attention is invited to R.L.A.'s Opinion No. 29-P Confl. dated 8/10/1949 (copy enclosed) andperhaps action as suggested in that opinion may be taken in the first instance.

Id/- P.M.L.
25/11

Remembrancer of Legal Affairs.

U.R. to F.D. No. 13582, dated the 26th November 1949

JPM.8/6/50.
4 copies,

Office of the R.L.A.

Payment of compensation for dispensing with services of Baroda State servant.

Mr. Pavri's case is on all fours with the case of Mr. Joshi of the Sangli Darbar. For the reasons stated in R.L.A's opinion No. 119-Confl., dated 4/3/48, in Mr. Joshi's case Mr. Pavri's claim for compensation against the Bombay Government would not be legally tenable. In view of the terms of his contract with the Baroda State andconcessions sanctioned to other State employees, he may be offered theconcessions stated in F.A.'s note at page 59 ante.

Id/- P.M.L.
22/11

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No 13399,
dated the 23rd November 1949

JPE.8/6/56.
4 copies.

Office of the R.L.A.

Re:State Bank of Kurundwad (Junior)Act.

As advised by the R.L.A. in his opinion No. 483-Confl., dated the 18th August 1949(p.87 ante), the Act has continued to remain in force even after the final merger. The Act could have been modified by an order under the Extra-Provincial Jurisdiction Act but now in view of the clause 4 of the States Merger (Governor's Provinces) Order, 1949, no such action can be taken. The Act can be amended only by a competent Legislature which would be Central Legislature xhixhin this case(see items 33 and 38 of List I, VII thm Schedule to the Government of India Act, 1935).

As the Act continues to be in theold form, it will not be possible to nominate Collector and other officers on the Board in place of Dewan and others who no longer exist. No such nominations would be permissible unless the Act is suitably amended and in view of this position, the other question raised by the Financial Adviser does not survive.

Id/- P.N.L.
19/9
Remembrancer of Legal Affairs

U.R. to F.D.,No. 602-Confl.,
dated the 20th September 1949.

JPE.8/6/56.
4copies.

L.D.R.I.No.10804 dt.16/7/49.

Submitted.

The Sachin State had entered into an agreement with Messrs. R.Dorabji & Co. for the manufacture and supply of liquor to the country liquor shops of the State for a period of ten years from 1st April 1943. With the introduction of the Bombay Abkari Act, the Chief Administrator was asked to inform the distillery contractor to obtain a fresh licence for the manufacture of country liquor on the revised conditions. The contractors at Sachin, however, refused to accept the conditions andhence the Distillery was closed. In view of these circumstnces, the Comdisioner thinks that the contractors can have noclaim for compensation for any l ss arising from closure of the distillery. The Commissioner further states that the agreement between the Sachin State and the contractors could not survive the intergration of the State with the Province but he still requests Government to issue an order under section 11 of the Indian State Application of Laws Order, 1948 cancelling the agreement.

The Revenue Department states that inthis case the advice given by the Remembrancer of Legal Affairs in rexspect of Lunawada Agreement seems to be applicable; and it is hence proposed to request the Commissioner to take action in the ligh of that advice.

Papers are bing shown to R.L.A. for advice before issue of orders.

Seen and returned. The course suggested by R.D. may be followed.

Id/-R.T.K. 18/8

R.L.A. - Id/- P.M.L.
19/10

L.R. to R.D. No.11731 dt. 20/10/1949 JPS-8/6/56.4a.

Office of the R.L.A.

Baroda State (Application of Laws) Order, 1949. Whether provisions regarding vaccination in the Arogya Raxan Niyams are continued in force.

Under sub-para (1) of para 3 of the Baroda State (Application of Laws) Order, 1949, read with Schedule I, the Bombay District Vaccination Act, 1892, has been extended to the Baroda State. Section 9 of the Act imposes a duty on the parent or guardian of a child to cause him to be vaccinated. Under para 3(iii) of the Order enactments not repealed under para 5 are continued in force. Under clause (c) of para 5 of the Order all enactmentsin force in the Baroda State and corresponding to the enactments in force in the Province of Bombay and extending to theBaroda State under paragraph 3 are repealed. The Arogya Raxan Niyams passed by the Baroda State have not been specifically repealed by the Baroda State (Application of Laws) order, 1949. But in view of paragraphs 3 and 5 of the said Order in so far as they provide for the compulsory vaccination of children, they will have to be deemed to have been repealed. Moreover, it appears that a law known as "[illegible]" was enacted in the State in 1914. According to section 2(2) of that Act the provisins in the Arogya Raxan Niyams were not to apply to places to which the "[illegible]" was extended. The "[illegible]" itself will be deemed to have been superseded by the Applica tion of Laws Order. Unde clause (b) of sub-section (2) of Sec. 2 of the Act the provisions of the Bombay District Vaccination Act willhowever have to be brought into force by a Notification.

Id/- P.M.L.
21/11
Remembrancer of Legal Affairs.

U.R. to H.& L.G.D.NO.13370 dt.23rd November 1949.

JPE.8/6/56.4c.

Office of the R.L.A.

Clause 5 of the collateral letter issued to the Rulers of Gujerat States which presumably includes the State of Rajpipla reads as follows:-

> "Pensions, gratuities, annuities, allowances granted by the State to the members of its public services who have retired or have proceeded on leave preparatory to retirement before 1st April 1948 as also the enjoyment of the ownership of Khangi villages lands, jagirs, grants, etc., existing on 1st April 1949 are hereby guaranteed. This guarantee is without prejudice to the right of Government of Bombay to issue any legislation which does not dicriminates against the States and their subjects."

Clause 7, which is another material clause in this connection, says that "no order passed or action taken by you before the date of making over the administration to the Dominion Government will be questioned unless the order was passed or actiontaken after the 1st April 1946, and is considered by the Government of India to be palpably unjust or unreasonable. The decision of the Government of India in this respect will be final." The combined effect of both these clauses is that whatever pensions etc. may have been granted after the 1st April 1948 can be revised provided the orders granting the pension are found to be palpably unjust or unreasonable. In respect of pensions granted prior to the 1st of April 1948, no recourse to clause 7 is at all possible. They are guaranteed under clause 5. That guarantee is subject to only one qualification which is cotained in the concluding sentence of Cl. 5. The intempart of that Concluding Sentence is to declare that whatever legislation may hereafter be passed by the Province in respect of pensioners or holders of jagirs etc. in general applicable to the entire Province will also be binding upon the pensioners jagirdars etc. of the States concerned notwithstanding the guarantee given in the earlier portion of the clause. The words " which does not

discriminate against the States and their subjects" are very significant. By "discrimination against" we mean making a distinction against or distinguishing unfavourably against. What is not permitted by these words is an unfavourable distinction against the States and their subjects vis-avis the Province proper and the subjects of the Province. The words make it abundantly clear that it is legislation of a uniform character applicable to the entire class of pensioners, gratuity holders etc. which is contemplated and not legislation applicable only to pensioners of particular States or even of States in general. Such latter kind of legislation would obviously be legislation discriminating against the States and their subjects.

2. In my opinion, it would not be competent to the Provincial Government to promote legislation which will affect the pensions of any particular State or of the States in general; but the legislation which is intended to apply to all pensions alike without any distinction would be extensible to the States.

Id/- P.M.L.
25/11
Remembrancer of Legal Affairs.

H.R. to P. & S.D. No. 13592,
dated the 26th November 1949.

JPR.8/6/56.
4 copies.

Office of the R.L.A.

Before payment of the privy purse amount can be made to the Yuvaraj of Rajpipla on behalf of his sister Rani of Chota Udepur Government will have to be satisfied that the Yuvaraj is lawfully empowered to receive such amount on behalf of his sister. The Yuvaraj has been unable to produce the Power of Attorney nor does he appear to be inclined to get himself appointed guardian according to ordinary law. In the circumstances he may be asked to get himself appointed as guardian through the Ministry of State and then pass an Indemnity Bond with appropriate conditions in favour of this Government so that this Government can get a full discharge, and ensure that the amount is spent for the benefit of the Rani.

Id/-. P.M.L.
7/12

Remembrancer of Legal Affairs

U.R. to P. & S.D., No. 14220,
dated the 8th December 1949.

JPS.8/6/56.
4 copies.

OPINION OF THE R.L.A.

It is a well-established rule of law that the rights which the inhabitants of a State enjoyed against its former Ruler avail them nothing against the successor Government except so far as they have been recognized by the new sovereign power. Recognition may be by legislation or by agreement, expressed or implied. (Compare the Secretary of State for India in Council vs. Bai Rajbai - 42 Indian Appeals p.229 and Vajesingji Joravarsingji vs. Secretary of State for India in council -51 Indian Appeals p. 357). This rule has been re-affirmed by the Privy Coubcil recently in the case of Syed Asrar Ahmed vs. The Dargah Committee Ajmer(49 Bom. L.R. p.236). In view of this legal position it xxxxwill be possible to hold that there is no legal obligation on the Provincial Government to abide by th agreements entered into by the Rulers of the States with private parties before the merger of the States with the Province of Bombay, but in certain cases, in view of the peculiar circumstances present in those cases, repudiation of the agreement may be fraught with difficulties. One such typical instance is that of the agreement entered into by the Kurundwad State (Senior) on 11th October 1946 with Mr. Narendra Singh Singhh regarding which the R.L.A has already given his opinion No. 10442 dated the 6th November 1948, wherein it was then suggested that by having recourse to the provisions of the Extra-Provincial Jurisdiction Act, 1947, an order should be made expressly over-riding the terms of the agreement but providing at the same time for due compensation to be paid to Mr. Singhi reimbursing him for theexpenditure so far incurred by him and granting a suitable solatium. It is understood that thereafter

negotiations.....

negotiations were taken up with Mr. Singhi for the purpose of determining the quantum of reasonable compensation; but they have not so far proved successful. The number of such cases are pending.

In all these case there is every likelihood of the matter being taken to a Court of law. Although eventually Government may succeed in establishing the position that the agreements are not binding upon them, Courts are not likely to view with favour the policy of total repudiation, which would inevitably involve the industrialist in loss of capital which he may have sunk in the enterprise and would expect that some reasonable compensation should be given to him if the agreement is to be repudiated.

2. In these circumstances and with a view to avoiding unnecessary litigation, it is desirable that some general principles should be evolved either for continuing the agreements in a modified form consistently with our laws and policy or for cancelling them after payment of reasonable compensation. It is unlikely that the party aggrieved would consent to the modification of the agreement or to the determination of compensation by mutual settlement, and such settlement would still leave the door open for litigation. The Government of India have written to say that unless the Provincial Government are entirely satisfied on the point that the specially favoured treatment is not founded upon any subsisting provisions of law or binding reciprocal agreement between the State and the party concerned, copies of the relevant orders or agreements etc. should be furnished to the Ministry of States in order that legal opinion on them may be obtined. That would suggest that the Government of India desire to examine each such individual case. If this procedure were to

to be followed, final decisions will be unduly postponed, andthere would moreover be no prospect of such decisions being accepted by the parties. It is necessary to apply uniform policy to all such cases and to decidethem finally with expedition. The Government of India may, therfore,be informed that the most satisfactory course in such cases would be to undertake some legislation uniformly for all Provinces concerned giving power to the Provincial Government ato get the agreements modified or compensation settled by the machinery of an arbitration tribunal andmaking the decision of th tribunal binding so tha there would be no scope left for litigation, and the question would be settled once for all with finality.

3. If this suggestion is accepted, the question whether legislation should bepromoted by the Government of India or by the Province can be considered in relation to their respective legislative powers.

4. The marginally noted cases are herewith returned, and, if necessary, an interim reply may be given to th e parties particularly to Mr. Singhi.

(1) Re:Rakastop Reservoir Project, Belgaum.

(2) Re: Continuance of monopoly granted by the Stat Govt. to

(2) Re: Grant of licences for the installation of oil expellers in the limits of th Palanpur Prant (i.e.Palanpur State.).

Id/- P.M.L.

Remembrancer of Legal Affairs.

PS.S/6/56.4c.

Legal Department.

It appears that a Ginning and Pressing Factory called the Gouri Shankar Ginning & Pre-ssing Factory at Mudhol was sold by the ruler of Mudhol State to the applicant Gundulal Nagi-ndas Shah in 1934 for Rs. 80,000. The deed of sale is not among the papers. But an extract which is at p. 13 shows that the deed contained the following conditions:-

(1) The period of monopoly was extended to 1958.

(2) The factory has a right to take water from a well near the river without any objection.

(3) The land on which the factory was built would not be included within the limits of a municipality.

It appears that after the jurisdiction of the State was handed over to the Government of Bombay under the Extra- Provincial Jurisdiction Act, 1947, a [illegible] has been granted to one Shankar Hanmant [illegible] for starting a ginning and pressing factory within the area which formed the limits of the Mudhol State. The question for consideration is whether the condition in the sale deed regarding monopoly is binding on the Government of Bombayand whether the grant of the license to Shankar Gunda is a violation of the said condition.

2 It is not clear from the papers whether the ginning factory which was sold to the applicant was a private concern of the ruler of Mudhol or was a State concern and whether the consideration was paid by the applicant was credited to the State revenues or was appropriated by the Ruler to his own benefit. If it was the latter, the grant of a monopoly on

behalf of the State was, so far as the State itself was concerned, without consideration and was hardly justified. Assuming for the sake of the argument that the monopoly was validly granted by the Ruler, the question still remains for consideration whether it is binding on the Government of Bombay.

3 The question how far the commitment or agreement or contracts entered into by the Indian Rulers are binding on the Provincial Government after the cession of the State territory to the Dominion Government and the taking over of such territory under the Extra-Provincial Jurisdiction Act or merger of the said territory in the Province has been considered in several cases. The principle of law which has been laid in the decisions of the Privy Council and which has been followed in this case is "that the rights which the inhabitants of a State enjoyed against the former Rulers may be recognized by the new sovereign power either by legislation or agreement express or implied".(See Syed Asrar Ahmed v.State v. Bai Rajbai I.L.R. 39 Bom. 625). It has, therefore, been held that there is no rule of automatical law, by which in the absence of express reservations, the acquiring State is subject to the contractual obligations of its predecessor (Halsbury's Laws of England Vol. 26 p. 255). In this case in the cession of jurisdiction signed by the Ruler of Mudhol there is no stipulation by which the cession was conditional subject to the recognition of any contract or agreement. The Government of India has therefore ruled that the Provincial Government are not bound to recognize any commitment of an Indian Ruler if such commitment is opposed to public policy. By the Indian States(Application of Laws) Order the provisions of the Indian Contract Act were applied to the Mudhol State. Under section 23 of the said Act, monopolies are opposed to public policy and any contract containing any stipulation granting a monopoly is void(Pollock & Mulla's Contract Act p.172). It is clear, therefore

that neither by agreement nor by legislation the Government of Bombay has agreed to recognise the condition of monopoly which is against the principle of public policy as followed in the Indian Dominion. In these circumstances the condition in the sale deed granting a monopoly to the applicant in respect of a ginning and pressing factory is void, and the Government of Bombay cannot recognize the same. The reply given by the Chief Secretary in his letter dated 6th January 1949 is correct.

Id./..... 4/11

Additional Secretary to Government.

SMR 9-6-56
4 Copies.